IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 20681 of 2007(S)

OPGW.457/2006 of FAMILY COURT, NEDUMANGAD
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PETITIONERS:
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1. **THANKA LAKSHMANAN,**
   SANTHOSH BHAVAN, ELAVINKUZHY, KALINGIMUKHAN,
   PARIYARAM, NEDUMANGAD, THIRUVANANTHAPURAM DIST.

2. **RADHA, W/O. THANKALAKSHMANAN,**
   SANTHOSH BHAVAN, ELAVINKUZHY, KALINGINMUKHAM,
   PARIYARAM, NEDUMANGAD, THIRUVANANTHAPURAM DIST.

3. **SANTHOSH, S/O. THANKALAKSHMANAN,**
   SANTHOSH BHAVAN, ELAVINKUZHY, KALINGIMUKHAM,
   PARIYARAM, NEDUMANGAD, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.K.SASIKUMAR
SRI. C.DEVARAJAN
SRI.S.SREEDUTT

RESPONDENTS:
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1. **SISUPALAN, S/O. SHANMUKHAN,**
   PUTHUVALVILA VEEDU, KOPPAM, KUTHIRAKULAM P.O.,
   MANICKAL VILLAGE, THIRUVANANTHAPURAM DISTRICT.

2. **STATE OF KERALA, REPRESENTED BY**
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
BY GOVERNMENT PLEADER SMT.DEEPA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP.(C) NO.20681/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CHARGE SHEET DT. 30.12.03 IN CRIME NO.399/03 FILED BYTHE DY.SP.ATTINGAL BEFORE THE JFCM, ATTINGAL.

EXT.P2:- COPY OF THE OP.(GW)NO.457/06 OF THE ADDITIONAL FAMILY COURT, NEDUMANGAD FILED BY THE 1ST RESPONDENT AGAINST THE PETITIONERS.

EXT.P3:- COPY OF THE PETITION DT. 7.4.07 SUBMITTED BY THE 3RD PETITIONER TO THE CIRCLE INSPECTOR OF POLICE, NEDUMANGAD.

EXT.P4:- COPY OF THE AFFIDAVIT FDT. 9.4.06 FILED BY THE 2ND PETITIONER BEFORE THE FAMILY COURT, NEDUMANGAD IN OP. 457/06.

EXT.P5:- COPY OF THE PROCEEDINGS DT. 30.5.07 OF THE FAMILY COURT, NEDUMANGAD.

EXT.P6:- COPY OF THE REPORT DT. 1.6.07 OF KERALA KAUMUDI DAILY.

EXT.P7:- COPY OF THE AFFIDAVIT DT. 4.6.07 FILED BY ADVOCATE C.DEVARAJAN BEFORE THE FAMILY COURT, NEDUMANGAD.

EXT.P8:- COPY OF THE AFFIDAVIT DT. 4.6.07 FILED BY ADVOCATE M.ANIRUDHAN BEFORE THE FAMILY COURT, NEDUMANGAD.

EXT.P9:- COPY OF THE FIR IN CRIME NO.465/07 OPF THE NEDUMANGAD POLICE STATION.

EXT.P10:- COPY OF THE AFFIDAVIT AND PETITION IN IA,. NO.1329/07 IN OP. 457/06 OF THE FAMILY COURT, NEDUMANGAD.

EXT.P11:- COPY OF THE ORDER DT. 13.6.07 IN OP. NO.457/06 OF THE FAMILY COURT, NEDUMANGAD.

/TRUE COPY/

P.A. TO JUDGE

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J.B.KOSHY & V.GIRI, JJ.

W.P.(C).NO.20681 OF 2007 (I)

Dated 3rd August, 2007

JUDGMENT

Koshy, J.

This writ petition is filed by the grand parents of Abhijith and Anujith. Mother of the children, that is, daughter of petitioners 1 and 2 met with an unnatural death on 5.9.2003. A criminal case is pending against the 1st respondent as dowry death. Case was charge sheeted before the Assistant Sessions Court, Attingal as S.C.No.1988/2004 and now transferred to Fast Track Court-I, Thiruvananthapuram. The prayer in this petition is that till the disposal of the criminal case, O.P.No.457/2006 pending before the Family Court, Nedumangad regarding the custody of the children should be postponed. It is further contended that earlier on one occasion, 1st respondent was given custody of the children for one hour from 11 a.m. on 30.5.2007. But children were not returned. Hence only after registering a crime and only after 14 days, children were produced. It is again submitted that several threatening calls were received for compelling the petitioners to give evidence in his favour and he was bargaining with the children. Family Court by

Ext.P11 even though given interim custody to the petitioners, did not consider all these aspects. We are not satisfied that this is a fit case to give directions to the court below to keep the proceedings in abeyance till criminal case is decided. All these circumstances pointed out by the petitioners should be considered by the Family Court while passing final orders regarding custody of the children, taking the paramount interest of the children. We are not expressing any opinion regarding the merits of the case at this stage. Both parties are allowed to adduce evidence and it is for the Family Court to consider all matters while passing final orders. With the above observations this writ petition is disposed of.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp